DR CHANDRA MUZAFFAR

v.

UNIVERSITI MALAYA

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING SUMMONS NO: R2-25-36 OF 1999]
4 AUGUST 1999

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Refusal to renew contract of employment - Ex parte application for leave to apply for certiorari and mandamus - Whether court could entertain application under O. 53 Rules of the High Court 1980 - Issue of merits - Whether could be discussed at leave application stage*

The applicant was appointed as a contract officer on yearly basis by the respondent as the Director and Professor of Civilisation and Dialogue Centre for the respondent university from 1 March 1997. On 18 February 1999, after having renewed the applicant's contract for the second year, the respondent issued a letter to the applicant indicating that on the expiry of the second year the contract would no longer be renewed. The respondent stated that the position held by the applicant would no longer be filled by a contract officer, and on 28 February 1999 the respondent terminated the applicant's contract. The applicant filed an *ex parte* application for leave to apply for *certiorari* to quash the respondent's decision not to renew his contract, and for mandamus to direct the respondent to reinstate him. The application was opposed by the respondent and the primary issues that arose were: (i) whether the court could entertain the application under O. 53 Rules of the High Court 1980, bearing in mind that the applicant's complaint was on refusal to renew a contract and not on dismissal; and (ii) whether issues of merits could be discussed by the parties at the leave application stage.

Held:

[1] The respondent is a creature of statute and the applicant was an employee of the respondent at the material time. The decision that had been made by the respondent had direct effect on the employment of the applicant. In such a situation it is not improper for the applicant to commence an action in this court under O. 53 Rules of the High Court 1980. It follows that there is nothing improper for this court to hear the instant application.

[2] It would be premature to discuss issues of merits at this leave application stage. The respondent would not in any way be prejudiced as such arguments on merits can be appropriately done at the later stage.

[3] This was an *ex parte* application and only the applicant was party to it. The respondent appeared in court only as *amicus curie*, and that being so the respondent has no legal capacity to lodge an appeal. The appeal by the respondent should be summarily struck out for want of *locus.*

[Leave to apply granted]

Case(s) referred to:
Dr Amir Hussein v. Universiti Sains Malaysia [1989] 3 MLJ 298 ***(dist)***
Ganda Oil Industries Sdn Bhd v. Kuala Lumpur Commodity Exchange [1988] 1 CLJ 126 ***(dist)***

Legislation referred to:
Courts of Judicature Act 1964, s. 25
Rules of the High Court 1980, O. 53

For the applicant - Ambiga Sreenivasan (Siva Kumar with him); M/s Skrine & Co
For the AG - Azizah Nawawi SFC
For the respondent - KK Wong (Hwang Min-Mei with him); M/s Lee Hishamuddin

Reported by WA Sharif

JUDGMENT

Azmel Maamor J:

In this case the applicant made an *ex parte* application for the following reliefs:

(1) That the applicant be granted leave to apply for an order of *certiorari* to remove into this Honourable Court for the purpose of it being quashed the decision in writing made on 18 February 1999 by the respondent;

(2) That the applicant be granted leave to apply for an order of *mandamus* directing the respondent to make a decision in accordance with law within seven days of an order of this court by reinstating the applicant as Director and Professor of the Centre of Civilisational Dialogue of the respondent without any loss of benefit;

In the alternative to paras 1 and 2 above,

(3) That the applicant be at liberty to seek the appropriate order/relief from this Honourable Court against the respondent pursuant to para. 1 of the Schedule to the Courts of Judicature Act 1964 and s. 25 thereof;

(4) That the costs incidental to the application herein be costs in the cause; and

(5) That all necessary and consequential directors and orders be given.

The applicant was appointed as a contract officer on yearly basis by the respondent as the Director and Professor of Civilisation and Dialogue Centre of the respondent University with effect from 1 March 1997. After having the applicant's contract renewed for the second year the respondent issued a letter to the applicant dated 18 February 1999 indicating that on the expiry of the second year the contract would no longer be renewed. The respondent stated the position held by the applicant would no longer be filled by a contract officer. The applicant's contract was terminated on 28 February 1999. It was against this refusal to renew his contract that the applicant filed this action in court.

This matter before me was an *ex parte* application for leave to apply for the reliefs as mentioned above. Having regard to the fact that the employment of the applicant by the respondent was on the basis of yearly contract and that the applicant's complaint was on refusal to renew the said contract rather than a dismissal, I invited the counsel for the applicant to address me on a legal issue ie, based on the status of the applicant's employment whether it is proper for this court to entertain an application under O. 53 of the Rules of the High Court. Towards that purpose I also invited not only the representative of the Attorney General's Chambers but also the counsel for the respondent with a view to assist me in arriving at a proper decision regarding jurisdiction. I requested all parties to submit their written submissions simultaneously.

The counsel for the respondent, in his lengthy submission, had strenuously tried to pursuade this court that the leave applied for by the applicant should not be granted. In his effort to so pursuade the court the counsel dealt on the merits on why the application for the order of *certiorari* should be dismissed. Obviously the counsel for the respondent had not conformed to the area of submission I sought from him. Likewise, counsel for the applicant had also touched on merits aspect of the application. Only the senior federal counsel, who made a short submission, submitted exactly to the point and issue that I was seeking. In her submission she held the view that this court has the jurisdiction to hear such application and said that the leave applied for by the applicant should be granted.

After having considered the submissions by the counsels I arrived at the conclusion that there is nothing improper for this application to be heard by the court. The respondent is a creature of a statute and the applicant was an employee of the respondent at the time of the incident. The decision that had been made by the respondent had direct effect on the employment of the applicant. In such a situation it is not improper for the applicant to commence an action in this court under O. 53 Rules of the High Court 1980. Consequently, on being satisfied that this Court has the jurisdiction to hear the application I granted the leave to the applicant. It was against this decision that the respondent filed this appeal.

At the outset I must point out that the application for leave by the applicant before me was an *ex parte* application. The status of the hearing of such application had not been changed even though I have invited the representative from the Attorney General's Chambers and counsel for the respondent to appear and submit before me. The reason why I invited the representative from the Attorney General's Chambers and the counsel for the respondent was to seek their views on a specific legal issue ie, whether this court can proceed to hear the applicant's application. Hence the appearance of the senior federal counsel and the respondent's counsel before me was at my invitation in the capacity as *amicus curie*. That being the status of the counsel for the respondent I am of the view that the respondent at this leave application stage does not have the right to lodge an appeal against my decision because the respondent is not made a party to the application yet. Only the applicant was a party to this *ex parte* application and only the applicant has the legal capacity to lodge an appeal if he is not satisfied with the decision. In the circumstances the appeal by the respondent should be summarily struck off for want of *locus*.

It may be pertinent for me to also point out that I had stressed to all counsels that in their written submissions I would not be concerned with and would not be interested in the issue of merits of the application. The merits of the application would be fully argued at a later stage in the event leave has been granted. In other words the arguments that I was interested to hear from the Counsels at this stage would be confined to the issue of jurisdiction and nothing else. Such being my request I did not request the respondent and the Attorney General to file any affidavit in reply. The senior federal counsel in conformity to my request did submit on the issue of jurisdiction only. However counsel for the respondent and counsel for the applicant had exceeded the parameters of their submissions and went on to argue on merits of the application. I was not concerned with that and as such those parts of the arguments on merits were ignored completely.

In support of his argument the counsel for the respondent placed great reliance on two cases namely *Ganda Oil Industries Sdn. Bhd. v. Kuala Lumpur Commodity Exchange* [1988] 1 CLJ 126; [1988] 1 MLJ 174 and *Dr. Amir Hussein v. Universiti Sains Malaysia* [1989] 3 MLJ 298. With the greatest respect I do not think these two cases could assist the respondent. In the case of *Ganda Oil (supra)* the decision of the Mahkamah Agong to refuse the order of *certiorari* was made after leave had been granted. Before me counsel for the respondent conceded to this fact. As to the case of *Dr. Amir Hussein (supra)* YA Edgar Joseph Jr. J (as he then was) had given the opportunity for the respondent to file an affidavit in reply. In other words the learned judge was geared towards hearing full arguments on the merits of the application even though at the stage for the application for leave.

Unfortunately there was no appeal to the Mahkamah Agong to confirm whether the learned High Court judge was right in entertaining arguments on merits at the leave application stage. As far as this case is concerned I have already cautioned all parties that I would not be interested to hear arguments on the merits of the application. It was for that reason I did not request the respondent and the Attorney General to file any affidavits in reply. In the circumstances the case of *Dr Amir Hussein* in distinguishable from the present case.

My decision to grant the leave to apply for the order of *certiorari* and order of *mandamus* by the applicant was made after I was satisfied that this court has the jurisdiction to hear such application. The documentations that had been filed by the applicant was found to be in conformity with the requirements of O. 53 of the Rules of the High Court 1980. In my view it would be premature to discuss issue of merits at this leave application stage. The respondent would not in any way be prejudised as such arguments on merits can be appropriately done at the later stage.